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9 IN THE UNITED STATES DISTRICT COURT  
10 THE NORTHERN DISTRICT OF CALIFORNIA  
11 SAN FRANCISCO DIVISION  
12

13 CLYDE R. DAVENPORT & ELLEN L.  
DAVENPORT,

14 Plaintiff,

15 v.

16 WASHINGTON MUTUAL BANK, F.A., ALL  
17 PERSONS KNOWN or entities unknown,  
claiming any legal or equitable right, title estate,  
18 lien or interest in the property described in the  
petition adverse to Plaintiffs' title, CLYDE R.  
19 DAVENPORT & ELLEN L. DAVENPORT or  
any cloud upon Plaintiffs' title thereto,

20 Defendant.  
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Case No.3:16-cv-01343-JCS

**REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF JPMORGAN CHASE  
BANK, N.A.'S MOTION TO DISMISS  
COMPLAINT**

Date: May 20, 2016  
Time: 9:30 a.m.  
Department: Courtroom G, 15<sup>th</sup> Floor  
Judge: Hon. Joseph C. Spero

Defendants JPMorgan Chase Bank, N.A and its predecessor-in-interest Washington Mutual Bank, F.A. (“Chase”) respectfully submit this Request for Judicial Notice in support of their Notice of Motion and Motion to Dismiss Pursuant to Federal Rule of Civil Procedure 12(b)(6).

Pursuant to Federal Rule of Evidence 201, Chase respectfully requests that the Court take judicial notice of the following documents, true and correct copies of which are attached hereto as Exhibits A-G:

Exhibit	Description
A	Deed of Trust, recorded on March 12, 2008 in the Contra Costa County Recorder Office, Doc. No. 2008-0052898-00
B	Purchase and Assumption Agreement (“P&A Agreement”) between Federal Deposit Insurance Corporation (“FDIC”) and Chase, dated September 25, 2008. The P&A Agreement is available for download on the FDIC’s website, at <a href="https://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf">https://www.fdic.gov/about/freedom/Washington_Mutual_P_and_A.pdf</a> .
C	Notice of Default and Election to Sell Under Deed of Trust, recorded on October 29, 2009 in the Contra Costa County Recorder Office, Doc. No. 2009-0258520-00 Notice of Default and Election to Sell Under Deed of Trust, recorded on June 16, 2011 in the Contra Costa County Recorder Office, Doc. No. 2011-0119596-00. Notice of Trustee’s Sale, recorded on July 28, 2010 in the Contra Costa County Recorder Office, Doc. No. 2010-0151423-00
D	Complaint filed by Plaintiffs in <i>Clyde R. Davenport, Ellen L. Davenport, et al. v. JPMorgan Chase Bank, N.A.</i> , No. C-11-02939 (Contra Costa County), on December 30, 2011
E	Complaint filed by Plaintiffs in <i>Johnny Hong, Clyde R. Davenport, et al.</i> , No. 30-2012-00611181 (Orange County), on November 13, 2012
F	Trustee’s Deed Upon Sale, recorded on March 9, 2016 by Caliber Home Loans, Inc. in the Contra Costa County Recorder Office, Doc. No. 2016-0040652-00
G	Plaintiffs’ Mortgage Loan Audit and Foreclosure Analysis

## **I. LEGAL STANDARD FOR JUDICIAL NOTICE**

A court may take judicial notice of a fact “not subject to reasonable dispute [and] . . . capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b); *see also MGIC Indem. Corp. v. Weisman*, 803 F.2d 500, 504 (9th Cir. 1986) (stating that a court “may take judicial notice of matters of public record outside the

1 pleadings”). Courts “may presume that public records are authentic and trustworthy.” *Gilbrook v.*  
2 *City of Westminster*, 177 F.3d 839, 858 (9th Cir. 1999).

3 Such judicially noticeable public records include recorded documents relating to real  
4 property. *See, e.g., Perez v. Am. Home Mortg. Servicing, Inc.*, No. 12-cv-009323-WHA, 2012 U.S.  
5 Dist. LEXIS 56744, at \*4 (N.D. Cal. Apr. 23, 2012) (taking judicial notice of deed of trust, notice  
6 of default, assignment of deed of trust, and substitution of trustee, all recorded with Alameda  
7 County Recorder’s Office); *accord Eng v. Dimon*, No. 11-cv-03173-MMC, 2012 U.S. Dist. LEXIS  
8 120694, at \*3 n.4 (N.D. Cal. Aug. 24, 2012). Such materials also include “printout[s] from a  
9 government website.” *Kenery v. Wells Fargo, N.A.*, No. 13-cv-02411-BLF, 2014 U.S. Dist. LEXIS  
10 117550, at \*7 (N.D. Cal. Aug. 22, 2014) (taking judicial notice of documents recorded with Santa  
11 Clara County Recorder’s Office and those printed from FDIC website). They also include court  
12 records filed in another case. *See United States v. Howard*, 381 F.3d 873, 876 n.1 (9th Cir. 2004).

## 13 **II. JUDICIAL NOTICE IS APPROPRIATE FOR EACH EXHIBIT PROFFERED BY** 14 **CHASE**

15 Each of Exhibits A-G to this Request is properly the subject of judicial notice, for the  
16 following reasons:

17 **Exhibit A** is a Deed of Trust for real property located at 5555 Thayer Lane, San Ramon,  
18 CA 94582, which is the subject of this lawsuit. This document is a public record subject to judicial  
19 notice because it was recorded in the Contra Costa County Recorder Office on March 12, 2008.  
20 Portions of Defendants’ Exhibit A are also attached as Exhibit A to Plaintiffs’ Complaint in this  
21 case.

22 **Exhibit B** is the P&A Agreement between the FDIC and Chase, dated September 25, 2008.  
23 It is a public record, and it is available for download on the FDIC’s website. It is also the subject of  
24 allegations in the Complaint in this case. *See Complaint*. The P&A Agreement has been judicially  
25 noticed numerous times by courts in this District. *See, e.g., Eng*, 2012 U.S. Dist. LEXIS 120694, at  
26 \*3 n.3 (taking judicial notice of P&A Agreement, “which document is available on the website of  
27 the” FDIC); *Couch v. JPMorgan Chase Bank, N.A.*, No. 11-cv-8710-GHK (SSx), 2012 U.S. Dist.  
28 LEXIS 188749, at \*3 n.1 (C.D. Cal. May 14, 2012) (same).

1       **Exhibit C** is a Notice of Default and Election to Sell Under Deed of Trust relating to  
2       Plaintiffs' default in connection with real property at 5555 Thayer Lane, San Ramon, CA 94582,  
3       which is the subject of this lawsuit. This document is a public record subject to judicial notice  
4       because it was recorded in the Contra Costa County Recorder Office on October 29, 2009. Exhibit  
5       C also contains a Notice of Trustee's Sale recorded on July 28, 2010 in the Contra Costa County  
6       Recorder Office. The Notice of Trustee's Sale is subject to judicial notice for the same reason as  
7       the Notice of Default. Exhibit C also contains another Notice of Default and Election to Sell Under  
8       Deed of Trust regarding the Subject Property. This document is a public record subject to judicial  
9       notice because it was recorded in the Contra Costa County Recorder Office on June 16, 2011.

10       **Exhibit D** is a Complaint filed by Plaintiffs in a case captioned *Clyde R. Davenport, Ellen*  
11       *L. Davenport, et al. v. JPMorgan Chase Bank, N.A.*, No. C-11-02939 (Contra Costa County), on  
12       December 30, 2011. This document is a court document from another litigation and is thus subject  
13       to judicial notice.

14       **Exhibit E** is a Complaint filed by Plaintiffs in a case captioned *Johnny Hong, Clyde R.*  
15       *Davenport, et al.*, No. 30-2012-00611181 (Orange County), on November 13, 2012. Exhibit E is a  
16       court document from another litigation and is thus subject to judicial notice.

17       **Exhibit F** is a Trustee's Deed Upon Sale filed by Caliber Home Loans, Inc. relating to real  
18       property at 5555 Thayer Lane, San Ramon, CA 94582, which is the subject of this lawsuit. This  
19       document is a public record subject to judicial notice because it was recorded on March 9, 2016 in  
20       the Contra Costa County Recorder Office.

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1       **Exhibit G** is Plaintiffs' Mortgage Loan Audit and Foreclosure Analysis, which was  
2 attached as Exhibit A to the 2011 Complaint filed by Plaintiffs in Costra Costa County superior  
3 court (attached hereto as **Exhibit D**). Exhibit G is a court document placed in the public record by  
4 Plaintiffs in another litigation and is thus subject to judicial notice.

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6 DATED: April 14, 2016

DAVIS WRIGHT TREMAINE LLP  
Joseph E. Addiego, III  
Mary McNeill

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9 By: /s/ Mary McNeill  
Mary McNeill

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11 Attorneys for Defendants  
JPMORGAN CHASE BANK, N.A.  
WASHINGTON MUTUAL BANK, F.A.  
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